

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

Mint Bank International, LLC and Guy Gentile Nigro

Plaintiffs,

v.

Office of the Commissioner of Financial Institutions of
Puerto Rico

Defendant.

Case 3:18-cv-01441-WGY

**RE: First Amendment,
Injunctive Relief**

PLAINTIFF’S MOTION FOR ENTRY OF DEFAULT JUDGMENT

Plaintiffs Mint Bank International, LLC (“Mint”) and Guy Gentile Nigro (“Gentile”) (collectively, where appropriate, “Plaintiffs”), pursuant to the Federal Rules of Civil Procedure and the Local Rules for the District of Puerto Rico, hereby moves this Court for entry of default judgment against Defendant for its knowing and willful failure to file its Answer as required by the FRCP Rule 12(a) and directed by this Court’s May 6, 2019, Order.

Mint and Gentile filed this civil rights action over ten months ago on July 3, 2018 under 42 U.S.C. § 1983 against The Office of the Commissioner of Financial Institutions of Puerto Rico, as well as two individuals in their official capacities (collectively “OCFI” or “Defendant”), alleging that the denial of Mint’s permit was done in retaliation for Gentile’s exercise of protected conduct and in violation of the First and Fourteenth Amendments to the U.S. Constitution, respectively. [Dkt. 1]. The Defendant filed a Motion to Dismiss on August 27, 2018, arguing that this court lacked subject matter jurisdiction to hear this dispute. [Dkt.13].

This Court denied in part and granted in part OCFI’s motion to dismiss. [Dkt. 20]. In its March 31, 2019 Order, this Court declared Plaintiffs’ causes of action under the First

Amendment against OCFI for retaliation and for proscribing Gentile's exercise of free speech to survive the Motion to Dismiss. Partial Judgment was Notified on April 10, 2019. Because FRCP 12(a) requires that an Answer be filed 14 days after any decision denying a motion to dismiss, OCFI had until Wednesday, April 24, 2019, to file its Answer to the Complaint.

When it failed to do so, counsel for Plaintiffs sent numerous emails to counsel for OCFI inquiring into when it intended to file an Answer and noting that if not filed promptly, Plaintiffs would file a motion for default. These emails, dated April 29 and April 30, 2019, reflect a good faith attempt by Plaintiffs to allow Defendant the ability to justify its failure to timely file any Answer. Finally, on, May 1, 2019, counsel for OCFI sent an email requesting that we allow them until Wednesday, May 8, 2019, to file an "Answer" to the surviving claims. See Exhibit 1 ("We hope you will accommodate our request to allow us until next Wednesday to file an answer.").

On May 6, 2019, Defendant filed a motion for extension of time until May 10, 2019, to File its Answer to the Complaint as to the surviving claims, [Dkt. 23], to which the court specifically ordered Defendant to "Answer" by May 10, 2019. [Dkt. 24].

On May 10, 2019, rather than file its Answer as required, Defendant filed a frivolous motion for a stay making jurisdictional arguments that it either made in its motion to dismiss, which were denied in this Court's Order on its motion to dismiss, or arguments that it failed to make in its motion to dismiss, and therefore waived. [Dkt. 25].

In support of its motion for a stay, OCFI asserts that the issues in this case are related to issues in a separate state court action in the Puerto Rico Court of Appeals. However, Defendant is proscribed from assuming such position in the instant case, as it has made multiple representations to the Puerto Rico Court of Appeals stating that the sole pending issue here –that

is, the violation of Plaintiff's First Amendment rights— is not even part of the claims before the state court.

The truth of the matter is that the main issue in this case is whether the denial of a banking license violated Plaintiffs' First Amendment rights in light of OCFI's actions as a governmental entity.

Moreover, Plaintiff Gentile is not a plaintiff in the state law case, which addresses different issues and different claims than the single issue here: whether the denial of the banking license violated Plaintiffs' First Amendment rights. Notably, the state action does not request damages from OCFI, as the Puerto Rico Court of Appeals would not be able to grant them under the facts and allegations of the case before it. Yet, the surviving causes of action in this case do have the potential and likelihood of damages being awarded due to OCFI's unreasonable and illegal violation of Petitioners' First Amendment rights, pursuant to 42 U.S.C. § 1983.

The foregoing is even more likely considering that Defendant acknowledges in its motion to stay that Plaintiffs duly submitted all the "required paperwork" necessary to obtain the banking license. Dkt. 25, p. 1. With this admission, it is now more than likely that Plaintiffs will prevail on their claims, since OCFI would have had no other excuse for denying the requested license other than having unlawfully considered protected speech in their final determination.

To this day, Defendant still has not submitted its Answer to the surviving claims of the Complaint. Further, Defendant is aware it is in default as established by the attached e-mails, and by its representation to counsel and this court that it would file its Answer by May 10, 2019. In addition, Defendant is aware that this Court ordered it to file its Answer by May 10, 2019. Defendant refuses to file its Answer as required by law and in defiance of this Court's Order.

THEREFORE, Plaintiffs request an order granting a default judgment and directing the court to place this action on a trial term calendar for an inquest against Defendant, assessing damages, with the Notice of Issue waived, and for such other and further relief as may be just

and proper herein. In the alternative, Plaintiffs seek an order compelling OCFI to file its Answer so that discovery may begin.

Dated: May 17, 2019

Respectfully submitted,

/s/ Adam C. Ford

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